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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,079	09/22/2003	David C. Ours	60,527-037	1249

27305 7590 10/20/2004

HOWARD & HOWARD ATTORNEYS, P.C.  
THE PINEHURST OFFICE CENTER, SUITE #101  
39400 WOODWARD AVENUE  
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER
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LOWE, MICHAEL S

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/668,079	<b>Applicant(s)</b> OURS ET AL.	
	<b>Examiner</b> M. Scott Lowe	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 19-22 is/are rejected.
- 7) ☒ Claim(s) 19,21,23,24 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/22/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Claim Objections***

Claims 19,21,24,26 are objected to because of the following informalities:

Claim 19 should have a period after the claim number.

Claim 21 states "of cutting top cutting the top" but should be "of cutting the top".

Claim 24 should end with a period.

Claim 26 states "fast" in line two but should be "first".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "the box" in line 2. There is insufficient antecedent basis for this limitation in the claim. For sake of examination it is assumed that the applicant meant "the case" rather than "the box" in both claims 20 and 21.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluytenaar (US 3,266,541) in view of Kuji (US 6,189,298).

Re claim 19, Kluytenaar teaches a method for cutting open a case 34 of product having a top and a bottom including the steps of:

placing the case on a first end of a conveyor belt 61, 79;

moving the case to a top cutting apparatus using the conveyor belt;

cutting open the top of the case 34;

moving the case to a lift apparatus 100 using the conveyor;

opening the top of the case 34;

lifting the product from the bottom of the case.

Kluytenaar does not teach cutting the case thereby separating the bottom of the case from the top of the case. However, Kuji teaches separating (figures 5 & 9) cutting the case thereby separating the bottom of the case from the top of the case as an alternative to only partially cutting and then folding the top (column 8, paragraph 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Kluytenaar by Kuji to separate the top and bottom both as an equivalent alternative and in order to remove the chance of the folded lid getting caught or colliding with other items.

Re claim 20, Kluytenaar teaches the step of cutting open the case includes the step of cutting the top of the case along first and second opposite sides of the top of the case.

Re claims 21, 22 Kluytenaar teaches the step of cutting open the case includes the step of cutting top cutting the top of the box from the first opposite side to the second opposite side.

### ***Allowable Subject Matter***

Claims 25 & 26 are allowed.

Claims 23 & 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art taken as a whole does not show nor suggest returning the product to the separated bottom of the case. The closest prior art, Kluytenaar, does not include returning the product to the separated bottom of the case as required by the claim and there is no motivation absent the applicant's own disclosure, to modify the Kluytenaar reference in the manner required by the claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wahl (US 2,729,885) teaches a case cutter.

Larizza (US 4,811,837) a separable case and display carton.

Heathcock (US 6,402,021) a separable case and display carton.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is 703-305-1940. The examiner can normally be reached on 6:30am-4:30pm M,Tu,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

msl

  
EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600